

(FIRST) ELAINE CROZIER OR VEALE, (SECOND) GWEN CROZIER OR LAMB, (THIRD) GEMMA ELIZABETH VEALE, (FOURTH) KIERAN NATHAN LAMB, (FIFTH) CAITLIN ANNE VEALE, (SIXTH) AIDAN ETHAN LAMB
against SCOTTISH POWER UK PLC

Case Ref No: PD101/21

Date of Hearing: 14 May 2024 at 10.30 (1 Day)

Division and Senators: First – LP, Lord Boyd, Lady Wise

Livestreamed Hearing?: Yes No

Agents and Counsel (if known):

Milligan KC: Thomson LLP

Mc Kenzie KC and E Campbell: Shepherd and Wedderburn LLP

Link to Judgment Reclaimed / Appealed (if available):

[2023csoh50.pdf \(scotcourts.gov.uk\)](#)

Case Description:

The pursuers are the relatives of Robert Crozier who died in 2018 from mesothelioma. He was employed by the defenders as a mechanical fitter between 1969 and 1992. In 2014, he settled an action for damages with the defenders, on a full and final basis, relating to asbestos exposure from which he contracted pleural plaques and asbestosis. Mr Crozier subsequently developed mesothelioma. The pursuers seek damages from the defenders in terms of s. 4(3)(b) of the Damages (Scotland) Act 2011 on the basis that his mesothelioma resulted from his negligent

exposure to asbestos. The general rule is that relatives of a deceased person cannot recover damages where liability therefor has been discharged by the deceased prior to his death (s. 4(2)). An exception applies in mesothelioma cases, provided that the three conditions in s. 5(1) are met.

At a debate on the procedure roll, the defenders sought dismissal of the action as incompetent. The issue concerned the proper interpretation of the first condition in s. 5(1)(a). The defenders argued that, for the exception to apply, the “liability to pay damages” which was discharged had to relate to personal injuries pertaining at the time the action was settled. It did not therefore apply in the present case because Mr Crozier did not, at the time of settling the 2014 action, suffer from mesothelioma. The pursuers submitted that the wording of s. 5 was clear and unambiguous. It could not be read as importing any limitation that the deceased had to be suffering from mesothelioma at the time of settling the action.

The Lord Ordinary agreed with the pursuers and remitted the case to proof. He reasoned that the liability discharged related to the relevant act or omission giving rise to liability, rather than any personal injury existing at the time of discharge.

The defenders renew their submission before the Inner House. They contend *inter alia* that the effect of the decree of absolvitor in the 2014 action was to destroy any right of the deceased or his relatives to bring an action for damages arising from mesothelioma. The exception in s. 5 could only apply where the deceased had (i)

raised proceedings while suffering from mesothelioma, and (ii) died from mesothelioma.